# OFFICE OF THE ATTORNEY GENERAL

81-00051

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October 31, 1980

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Hon. Jasper Fielding, Chairman
Coosa County Commission
P.O. Box 6
Rockford, AL    35136

> Counties, County Commission-
> ers, Coosa County, Elections
>
> To be qualified as a candi-
> date for Coosa County Com-
> mission one must reside in
> the district for which he
> seeks election

Dear Mr. Fielding:

You have sent to this office a copy of Act No. 141,
Acts of Alabama 1876-1877, page 154, which provides
among other things that county commissioners in Coosa
County "shall reside in the district for which they are
severally elected." Along with this copy of Act No.
141 you have requested this office's response to the
following inquiries:

Question #1: Is this law as written still in ef-
fect for Coosa County?

Question #2: Does the Democratic Executive Com-
mittee or any other party have the
authority to refuse a person from
qualifying for a commissioner's
district that does not live in the
district that he is seeking?

Question #3: As probate Judge do I have authority
to refuse to put his name on the
ballot if he does not live in the

district in which he is running?

Question #1:

Act No. 141, Acts of Alabama 1876-1877, page 154 was repealed by Act No. 193, Acts of Alabama 1884-1885, page 317, which in turn was repealed by Act No. 128, Acts of Alabama 1953, page 176. The latest Act in pertinent part provides the following:

> Section 2. For the purposes of this act, Coosa County is hereby divided into four commissioner's districts. . . . One member of the court of county commissioners of Coosa County shall be elected for each commissioner's district. Each member must be a resident of and a qualified elector in the district he represents, and shall be nominated and elected by the qualified electors of his district.
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> * * *
>
> Section 4. The provisions of any law, including local laws, contrary to the provisions of this act are repealed.

The 1953 Act is the current law in effect for Coosa County. As is readily apparent from a reading of this Act, it goes further than the 1876-1877 Act and provides that the person must 1. reside in the district he represents; 2. be a qualified elector in that district and 3. be nominated and elected by the qualified electors of his district. In light of this last requirement, it is my opinion that the current practice in Coosa County which you pointed out in your letter of candidates for county commission running county-wide, is in violation of this Act.

Question #2:

In Code of Alabama 1975, §17-16-14 the following is set out:

> . . . but every governing body of a party shall have the right, power and authority to fix and prescribe the political or other qualifications of its own members and shall, in its own way, declare and determine who shall be entitled and qualified . . . to be candidates therein or to otherwise participate in such political parties and primaries.

> * * *

> Nothing herein contained shall be so construed as to prohibit any state executive committee of a party from fixing such qualifications as it may deem necessary for persons desiring to become candidates for nomination to offices at a primary election

Consistent and in full accord with this statute is Code of Alabama 1975, §17-16-12, and the case Ray v. Blair, 257 Ala. 151, 57 So.2d 395 rev'd on other grounds 343 U.S. 214 (1952).

It is clear from the above that the Democratic Executive Committee does have authority to refuse a party member from qualifying for a commissioner's district in which he does not reside.

Question #3:

In an opinion issued by this office earlier this year which concerned a Madison County act similar to the present act, a distinction was made between a non-resident candidate for county commission qualifying for the primary election and for the general election. The author of that opinion determined that a person could qualify to run for county commissioner at the primary election without being a resident of the district for which he was running. This, the author reasoned, was due to the fact that the residency qualification could be fulfilled by the candidate prior to the general election. The author of this opinion did conclude that if at the time of the general election the candidate still lived outside the district for which he was running, then "election officials would be justified in not placing the individual's name on the ballot for the election." See, Opinion to Honorable James Record, Chairman, Madison County Commission, January 7, 1980.

The above opinion is hereby modified in light of Code of Alabama 1975, §17-16-12, to allow election officials (i.e. probate judges) to refuse to place a person's name on the ballot during a primary election as well as a general election if that person does not reside in the district for which he is seeking election. Code of Alabama 1975, §17-16-12 states in pertinent part:

> The name of no candidate shall
> be printed upon any official
> ballot used at any primary
> election unless such person is
> legally qualified to hold the
> office for which he is a can-
> didate. . . .

The residency requirement for county commissioners found in Act No. 128, Acts of Alabama 1953, page 176, must be satisifed for one to be "legally qualified to hold office" within §17-16-12 above. Therefore, it is my opinion that the probate judge is justified in refusing to place the name of any person not satisfying this requirement on the ballot.

I hope this adequately answers your questions and will serve as an appropriate guide for your future course of action concerning this matter.

Very truly yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL
BY –

WM. DUDLEY MOTLOW
ASSISTANT ATTORNEY GENERAL

WDM:sbh